

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

|                                      |   |                                    |
|--------------------------------------|---|------------------------------------|
| In the Matter of:                    | / | US EPA Docket No.                  |
|                                      | / | FIFRA 02-2005-5301                 |
| Martex Farms, S.E.                   | / |                                    |
| Rd. No. 1, Km. 96.2                  | / |                                    |
| Santa Isabel, Puerto Rico 00757      | / | Second Amended Complaint and       |
|                                      | / | Notice of Opportunity for Hearing  |
|                                      | / |                                    |
| Respondent                           | / | Proceeding under Section 14(a) of  |
|                                      | / | the Federal Insecticide, Fungicide |
|                                      | / | and Rodenticide Act ("FIFRA"), as  |
|                                      | / | amended, 7 U.S.C. §136l(a).        |
| //////////////////////////////////// |   |                                    |

**ANSWER TO THE SECOND AMENDED COMPLAINT**

TO THE PRESIDING OFFICER:

COMES NOW respondent Martex Farms, S.E. through undersigned counsel and, as ordered by the Hon. Susan L. Biro on September 6, 2005, notified on same date, answers EPA's Second Amended Complaint and Notice of Opportunity for Hearing:

**I. INTRODUCTION**

1. Being an issue of law, an answer is not required. It is admitted that Martex Farms, S.E. is the correct name of the Respondent.
2. Being an issue of law, an answer is not required.
3. As stated in paragraph 3 of the complaint, EPA's allegations as to violations are denied.

## **II. COMPLAINT**

### **Finding of Facts and Conclusions of Law**

4. It is admitted.

5. Being an issue of law, an answer is not required.

6. As stated in paragraph 6 of the complaint, it is admitted that Respondent operated a farm known as “Jauca facility”, for the production of fruits and ornamental plants.

7. As stated in paragraph 7 of the complaint, EPA’s allegations are denied. At this facility, Respondent operated a fruit-packing house, a motor pool and a warehouse.

8. As stated in paragraph 8 of the complaint, EPA’s allegations are denied. At this facility, Respondent operated an agricultural concern known as Finca Paso Seco.

9. It is admitted.

10. Being an issue of law, an answer is not required.

11. Being an issue of law, an answer is not required.

12. Being an issue of law, an answer is not required.

13. Being an issue of law, an answer is not required.

14. Being an issue of law, an answer is not required.

15. It is admitted.

16. Being an issue of law, an answer is not required.

17. Being an issue of law, an answer is not required.

18. It is admitted.

19. Being an issue of law, an answer is not required.

20. Being an issue of law, an answer is not required.
21. Being an issue of law, an answer is not required.
22. It is admitted that the inspection of August 20, 2003, was held, the rest is denied.
23. It is admitted that the inspector issued a Notice of Warning to Respondent of September 26, 2003 (notice regarding to the Coto Laurel visit of August 20, 2003.) Respondent affirmatively alleges that upon receipt of said Notice of Warning, all corrective measures were immediately taken, therefore adequately serving the public interest and the ultimate purpose of the law. Also, see answer to paragraph 29, below.
24. It is admitted that the inspection of September 5, 2003, was held, the rest is denied.
25. It is admitted that the inspector issued a Notice of Warning to Respondent on October 6, 2003 (notice regarding the Sept 5, 2003, visit to viveros in Paso Seco). Respondent affirmatively alleges that upon receipt of said Notice of Warning, all corrective measures were immediately taken, therefore adequately serving the public interest and the ultimate purpose of the law. Due to high personnel turnover, some agricultural workers had not taken the WPS training course on Sept 5, 2003. As soon as copies of the WPS training videos were received from the P.R. Department of Agriculture, Respondent immediately implemented a temporary training program to be substituted by a more complete WPS training (card issued by EPA.) Also, see answer to paragraph 29, below.

26. It is admitted that the inspection of September 5, 2003, was held, the rest is denied.

27. It is admitted that PRDA issued a Notice of Warning to Respondent on October 29, 2003 (notice regarding the Sept 5, 2003 visit to Rio Canas). Respondent affirmatively alleges that upon receipt of said Notice of Warning, all corrective measures were immediately taken, therefore adequately serving the public interest and the ultimate purpose of the law. Also, see answer to paragraph 29, below.

28. It is admitted that the inspection of September 5, 2003, was held, the rest is denied.

29. It is admitted that PRDA issued a Notice of Warning to Respondent on October 30, 2003 (notice regarding the Sept 5, 2003 visit to Jauca). Respondent affirmatively alleges that upon receipt of said Notice of Warning, all corrective measures were immediately taken, therefore adequately serving the public interest and the ultimate purpose of the law. Also, see affirmative defense number 12: The agency has discretion to pursue different courses of action taking into account that no violations were reported following the March 24, 2003 PRDA-EPA inspection of the Jauca facility, and that there is no evidence that Respondent has caused harm to health or the environment. Section 14(a)(4) of FIFRA states that EPA may choose to issue a Notice of Violation in lieu of a civil penalty if the agency determines that the violation occurred despite the exercise of due care or the violation did not cause significant harm to health or the environment. Section 9(c)(3) also permits the EPA to issue a written Notice of Warning in lieu of instituting a proceeding for minor



violations of FIFRA if the Administrator believes that the public interest will be adequately served through this course of action.

30. It is admitted that the inspection of April 26, 2004, was held, the rest is denied. It is affirmatively alleged that the Complainant has disregarded official policy contained in the agency's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy, among others, chapter (3.1) on Decontamination, that deals with requirements such as Size of eyeflush containers (3.11); Single-use towels (3.12); Decontamination materials for flaggers (3.13); Immediate Availability of eyeflush (3.14); Examples of immediate availability (3.15); WPS and OSHA requirements for decontamination water (3.17); and Use of diluent water for decontamination (3.21); Chapter (12.1) on Personal Protective Equipment, dealing with Chemical resistant footwear (12.12); Eye protection for dilute formulation (12.15), and Storage of PPE "apart" and "away" (12.19).

31. Being an issue of law, an answer is not required.

32. Being an issue of law, an answer is not required.

33. Being an issue of law, an answer is not required.

34. Being an issue of law, an answer is not required.

35. Being an issue of law, an answer is not required. Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

36. Being an issue of law, an answer is not required. Also, see answer to paragraph 35, above.

37. Being an issue of law, an answer is not required. Also, see answer to paragraph 35, above.

38. Being an issue of law, an answer is not required.

39. Being an issue of law, an answer is not required.

40. Being an issue of law, an answer is not required.

41. Being an issue of law, an answer is not required.

42. Being an issue of law, an answer is not required. Also, see answer to paragraph 35, above.

43. It is admitted, subject to the rest of quoted paragraph. Also, see answer to paragraph 35, above.

44. It is admitted, subject to the rest of quoted paragraph. Also, see answer to paragraph 35, above.

45. Being an issue of law, an answer is not required. Also, see answer to paragraph 35, above.

46. Being an issue of law, an answer is not required. Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

47. Being an issue of law, an answer is not required. Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

48. Being an issue of law, an answer is not required. Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

49. It is admitted that the inspection of April 26, 2004, was held, the rest is denied. It is affirmatively alleged that the Complainant has disregarded official policy contained in the agency's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy, among others, chapter (3.1) on Decontamination, that deals with requirements such as Size of eyeflush containers (3.11); Single-use towels (3.12); Decontamination materials for flaggers (3.13); Immediate Availability of eyeflush (3.14); Examples of immediate availability (3.15); WPS and OSHA requirements for decontamination water (3.17); and Use of diluent water for decontamination (3.21); Chapter (12.1) on Personal Protective Equipment, dealing with Chemical resistant footwear (12.12); Eye protection for dilute formulation (12.15), and Storage of PPE "apart" and "away" (12.19).

It is also affirmatively alleged that Respondent's agronomist was handed the Coto Laurel visit report and was required to sign it. The document had been drafted in English by the inspector. Not only Mr. Alvaro Acosta's English is poor, to say the least, he did not attend EPA's Coto Laurel farm inspection of April 26, 2004.

50. It is denied. Respondent affirmatively alleges that nothing was sprayed in Coto Laurel on such date and that there was no need for this category of personnel at the site.

51. Being an issue of law, an answer is not required.

52. Being an issue of law, an answer is not required. Alternatively, it is denied.

53. Being an issue of law, an answer is not required. Alternatively, it is denied.

**COUNTS 1-151**  
**FAILURE TO NOTIFY WORKERS OF PESTICIDE APPLICATIONS**

54. It is admitted, subject to test of materiality and noted exceptions.

55. As stated in paragraph 55 of the complaint, EPA's allegations are denied.

Respondent affirmatively alleges that statements attributed to Mr. Alvaro Acosta have been taken out of context. His obligations do not include reporting pesticide applications nor the preparation and posting of WPS reports at the central information center. Respondent further alleges, as clearly stated to inspector, that all applications of pesticide (herbicides included) are indeed documented, which suggests that inspector confused issues since herbicides (vis-a-vis other pesticides) are applied, supervised, documented and reported by diverse company employees.

56. As stated in paragraph 56 of the complaint, EPA's allegations are denied.

The Respondent gave to the PRDA-EPA Inspectors all the information they requested, being their duty to thoroughly review the data so that a well pleaded complaint could be submitted for adjudication.

The raw data given to the inspectors was erroneously reviewed and the EPA had to submit a "Motion for Leave to File First Amended Complaint" to amend the Complaint due to alleged "technical errors." Additionally, also resulting from the inspector's confusion and misrepresentation of data provided by the Respondent, the Complainant had to remove Application No. 10 from the tables presented in Paragraphs 56 and 71 of the Complaint (and the two counts associated therewith, as reflected in Paragraphs 59 and 74) because it had incorrectly identified Field JC-41 a



mango field in which the pesticide “Clear Out 41 Plus” had been applied on March 29, 2004.

However, a considerable number of applications of the pesticide “Clear Out 41 Plus” on different dates --forty one to be precise-- have been erroneously kept by the EPA in the tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as the eighty two counts associated therewith reflected in Paragraphs 59 and 74, as follows: Twenty nine (29) applications of pesticides on fields that are not part of the Jauca facility; six (6) applications of pesticides along fences or property limits; three (3) applications of pesticides in workshops; and three (3) applications of pesticides in nurseries. PRDA-EPA personnel should again review the data provided by the Respondent updating the Complainant’s Exhibit No. 21b, to remove the above applications and all counts associated therewith as reflected in Paragraphs 59 and 74 of the Amended Complaint.

Also, over fifty (50) applications of the pesticide “Clear Out 41 Plus” have been duplicated and included in the same tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as their corresponding counts associated therewith reflected in Paragraphs 59 and 74. Consequently, all of EPA’s allegations included in this complaint are flawed, and the proposed civil penalties should be denied.

#### **APPLICATION TABLE**

| <b>App #</b> | <b>Date of Application</b> | <b>Field Name/Crop</b> | <b>Comments</b>                         |
|--------------|----------------------------|------------------------|---|
| 1            | March 29, 2004             | MJF-04G/Banana*        | Ok                                      |
| 2            | March 29, 2004             | TX-52G/Banana*         | Ok                                      |
| 3            | March 29, 2004             | MJF-04G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 1)       |
| 4            | March 29, 2004             | MJF-04G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 1 and 3) |
| 5            | March 29, 2004             | TX-52G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 2)       |

|    |                |                         |  |
|----|----------------|-------------------------|--|
| 6  | March 29, 2004 | TX-41                   | Ok (CORRECTED previously misidentified as JC-41/Mango) |
| 7  | March 29, 2004 | TX-31/Mango             | Ok   |
| 8  | March 29, 2004 | TX-32/Mango             | Ok   |
| 9  | March 29, 2004 | TX-52G/Banana*          | COUNT HAS BEEN DUPLICATED (SEE 2 and 5)                |
| 10 | March 30, 2004 | ON-41P/Palms*           | Ok   |
| 11 | March 30, 2004 | JC-41/Mango             | Ok   |
| 12 | March 30, 2004 | ON-41P/Palms*           | COUNT HAS BEEN DUPLICATED (SEE 10)                     |
| 13 | March 30, 2004 | JC-42/Mango             | Ok   |
| 14 | March 30, 2004 | ON-41P/Palms*           | COUNT HAS BEEN DUPLICATED (SEE 10 and 12)              |
| 15 | March 31, 2004 | JC-22/Mango             | Ok   |
| 16 | March 31, 2004 | D501/Mango              | <b>There is no field named D501 in the Jauca farm</b>  |
| 17 | March 31, 2004 | JC-11/Mango             | Ok   |
| 18 | March 31, 2004 | ON-42P/Palms*           | Ok   |
| 19 | March 31, 2004 | ON-42P/Palms*           | COUNT HAS BEEN DUPLICATED (SEE 18)                     |
| 20 | March 31, 2004 | ON-43P/Palms*           | Ok   |
| 21 | March 31, 2004 | ON-43P/Palms*           | COUNT HAS BEEN DUPLICATED (SEE 20)                     |
| 22 | March 31, 2004 | D601/Mango              | <b>There is no field named D601 in the Jauca farm</b>  |
| 23 | March 31, 2004 | JC-21/Mango             | Ok   |
| 24 | April 1, 2004  | D701/Mango              | <b>There is no field named D701 in the Jauca farm</b>  |
| 25 | April 1, 2004  | JC-12P/Palms*           | Ok   |
| 26 | April 1, 2004  | D601/Mango              | <b>There is no field named D601 in the Jauca farm</b>  |
| 27 | April 1, 2004  | JC-12P/Palms*           | COUNT HAS BEEN DUPLICATED (SEE 25)                     |
| 28 | April 1, 2004  | JC-12P/Palms*           | COUNT HAS BEEN DUPLICATED (SEE 25 and 27)              |
| 29 | April 1, 2004  | JC-23/Mango             | ?  |
| 30 | April 1, 2004  | JC-31/Mango             | Ok   |
| 31 | April 2, 2004  | Invernadero/Ornamental* | <b>This is not a fruit field, is a nursery</b>         |
| 32 | April 2, 2004  | Invernadero/Ornamental* | <b>This is not a fruit field, is a nursery</b>         |
| 33 | April 2, 2004  | Verjas/Crop Not Listed  | <b>This is not a fruit field, is a fence</b>           |
| 34 | April 2, 2004  | JC-11/Mango             | Ok   |
| 35 | April 2, 2004  | Invernadero/Ornamental* | <b>This is not a fruit field, is a nursery</b>         |
| 36 | April 2, 2004  | TX-54G/Banana*          | Ok   |
| 37 | April 2, 2004  | TX-54G/Banana*          | COUNT HAS BEEN DUPLICATED (SEE 36)                     |
| 38 | April 2, 2004  | Verjas/Crop Not Listed  | <b>This is not a fruit field, is a fence</b>           |
| 39 | April 2, 2004  | Verjas/Crop Not Listed  | <b>This is not a fruit field, is a fence</b>           |
| 40 | April 2, 2004  | JC-32/Mango             | Ok   |
| 41 | April 2, 2004  | D401/Mango              | <b>There is no field named D401 in the Jauca farm</b>  |
| 42 | April 2, 2004  | TX-54G/Banana*          | COUNT HAS BEEN DUPLICATED (SEE 36 and 37)              |
| 43 | April 5, 2004  | DSPR/Mango              | <b>There is no field named DSPR in the Jauca farm</b>  |
| 44 | April 5, 2004  | TX-22/Mango             | Ok   |
| 45 | April 5, 2004  | TX-32/Mango             | Ok   |
| 46 | April 5, 2004  | TX-06P/Palms*           | Ok   |
| 47 | April 5, 2004  | TX-06P/Palms*           | COUNT HAS BEEN DUPLICATED (SEE 46)                     |
| 48 | April 5, 2004  | JC-06P/Palms*           | Ok   |
| 49 | April 5, 2004  | TX-06P/Palms*           | COUNT HAS BEEN DUPLICATED (SEE 46 and 47)              |
| 50 | April 5, 2004  | JC-07P/Palms*           | Ok   |

|    |                |                        |   |
|----|----------------|------------------------|---|
| 51 | April 5, 2004  | JC-07P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 50)                            |
| 52 | April 5, 2004  | JC-07P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 50 and 51)                     |
| 53 | April 5, 2004  | JC-06P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 48)                            |
| 54 | April 5, 2004  | JC-06P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 48 and 53)                     |
| 55 | April 6, 2004  | MJF-07P/Palms*         | Ok  |
| 56 | April 6, 2004  | MJF-07P/Palms*         | COUNT HAS BEEN DUPLICATED (SEE 55)                            |
| 57 | April 6, 2004  | MJF-07P/Palms*         | COUNT HAS BEEN DUPLICATED (SEE 55 and 56)                     |
| 58 | April 6, 2004  | ON-11A/Avocado*        | Ok  |
| 59 | April 6, 2004  | TX-41/Mango            | ?   |
| 60 | April 6, 2004  | ON-12C/Citrus          | Ok  |
| 61 | April 6, 2004  | DSPR/Mango             | <b>There is no field named DSPR in the Jauca farm</b>         |
| 62 | April 6, 2004  | Taller/Crop Not Listed | <b>This is not a fruit field, is a workshop</b>               |
| 63 | April 6, 2004  | Taller/Crop Not Listed | <b>This is not a fruit field, is a workshop</b>               |
| 64 | April 6, 2004  | Taller/Crop Not Listed | <b>This is not a fruit field, is a workshop</b>               |
| 65 | April 7, 2004  | R010/Mango             | <b>There is no field named R010 in the Jauca farm</b>         |
| 66 | April 7, 2004  | D106/Mango             | <b>There is no field named D106 in the Jauca farm</b>         |
| 67 | April 7, 2004  | DSPI or DSPR/Mango     | <b>There is no field named DSPI or DSPR in the Jauca farm</b> |
| 68 | April 7, 2004  | ON-71A/Avocado         | Ok  |
| 69 | April 7, 2004  | ON-06A/Avocado         | Ok  |
| 70 | April 7, 2004  | OS-33H/Plantains*      | Ok  |
| 71 | April 7, 2004  | TX-53G/Banana          | Ok  |
| 72 | April 7, 2004  | OS-17P/Palms*          | Ok  |
| 73 | April 7, 2004  | OS-17P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 72)                            |
| 74 | April 7, 2004  | ON-72A/Avocado         | Ok  |
| 75 | April 7, 2004  | OS-33H/Plantains*      | COUNT HAS BEEN DUPLICATED (SEE 70)                            |
| 76 | April 7, 2004  | ON-82A/Avocado         | Ok  |
| 77 | April 7, 2004  | TX-53G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 71)                            |
| 78 | April 7, 2004  | R013/Mango             | <b>There is no field named R013 in the Jauca farm</b>         |
| 79 | April 7, 2004  | R011/Mango             | <b>There is no field named R011 in the Jauca farm</b>         |
| 80 | April 7, 2004  | DSPR/Mango             | <b>There is no field named DSPR in the Jauca farm</b>         |
| 81 | April 8, 2004  | DSPR/Mango             | <b>There is no field named DSPR in the Jauca farm</b>         |
| 82 | April 12, 2004 | ON-82A/Avocado         | Ok  |
| 83 | April 12, 2004 | ON-21A/Avocado         | Ok  |
| 84 | April 12, 2004 | ON-32A/Avocado         | Ok  |
| 85 | April 12, 2004 | DSPR/Mango             | <b>There is no field named DSPR in the Jauca farm</b>         |
| 86 | April 13, 2004 | ON-21A/Avocado         | Ok  |
| 87 | April 13, 2004 | ON-31A/Avocado         | Ok  |
| 88 | April 13, 2004 | ON-22A/Avocado         | Ok  |
| 89 | April 13, 2004 | D001/Mango             | <b>There is no field named D001 in the Jauca farm</b>         |
| 90 | April 13, 2004 | MJF-09P/Palms*         | Ok  |
| 91 | April 13, 2004 | MJF09P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 90)                            |
| 92 | April 13, 2004 | MJF09P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 90 and 91)                     |
| 93 | April 14, 2004 | D001/Mango             | <b>There is no field named D001 in the Jauca farm</b>         |
| 94 | April 14, 2004 | MJF-09P/Palms*         | Ok  |
| 95 | April 14, 2004 | OS-25H/Plantains*      | Ok  |



|     |                |                        |   |
|-----|----------------|------------------------|---|
| 96  | April 14, 2004 | OS-25H/Plantains*      | COUNT HAS BEEN DUPLICATED (SEE 95)                    |
| 97  | April 14, 2004 | MJF-09P/Palms*         | COUNT HAS BEEN DUPLICATED (SEE 94)                    |
| 98  | April 14, 2004 | R401/Mango             | <b>There is no field named R401 in the Jauca farm</b> |
| 99  | April 14, 2004 | OE-22G/Banana*         | Ok  |
| 100 | April 14, 2004 | OE-22G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 99)                    |
| 101 | April 14, 2004 | MJF-09P/Palms*         | COUNT HAS BEEN DUPLICATED (SEE 94 and 97)             |
| 102 | April 14, 2004 | OE-22G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 99 and 100)            |
| 103 | April 15, 2004 | OE-22G/Banana*         | Ok  |
| 104 | April 15, 2004 | OE-22G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 103)                   |
| 105 | April 15, 2004 | Verjas/Crop Not Listed | <b>This is not a fruit field, is a fence</b>          |
| 106 | April 15, 2004 | Verjas/Crop Not Listed | <b>This is not a fruit field, is a fence</b>          |
| 107 | April 15, 2004 | OE-22G/Banana*         | COUNT HAS BEEN DUPLICATED SEE 103 and 104)            |
| 108 | April 15, 2004 | D201/Mango             | <b>There is no field named D201 in the Jauca farm</b> |
| 109 | April 15, 2004 | R403/Mango             | <b>There is no field named R403 in the Jauca farm</b> |
| 110 | April 15, 2004 | Verjas/Crop Not Listed | <b>This is not a fruit field, is a fence</b>          |
| 111 | April 16, 2004 | OE-21G/Banana*         | Ok  |
| 112 | April 16, 2004 | MJF-04G/Banana*        | Ok  |
| 113 | April 16, 2004 | OE-21G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 111)                   |
| 114 | April 16, 2004 | MJF-04G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 112)                   |
| 115 | April 16, 2004 | OE-21G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 111 and 113)           |
| 116 | April 16, 2004 | MJF-04G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 112 and 114)           |
| 117 | April 16, 2004 | R405/Mango             | <b>There is no field named R405 in the Jauca farm</b> |
| 118 | April 19, 2004 | R108/Mango             | <b>There is no field named R108 in the Jauca farm</b> |
| 119 | April 19, 2004 | ON-09A/Avocado         | Ok  |
| 120 | April 19, 2004 | MJF-03G/Banana*        | Ok  |
| 121 | April 19, 2004 | D401/Mango             | <b>There is no field named D401 in the Jauca farm</b> |
| 122 | April 19, 2004 | MJF-03G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 120)                   |
| 123 | April 19, 2004 | MJF-03G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 120 and 122)           |
| 124 | April 19, 2004 | ON-09A/Avocado*        | COUNT HAS BEEN DUPLICATED (SEE 119)                   |
| 125 | April 20, 2004 | D601/Mango             | <b>There is no field named D601 in the Jauca farm</b> |
| 126 | April 20, 2004 | R104/Mango             | <b>There is no field named R104 in the Jauca farm</b> |
| 127 | April 20, 2004 | ON-41P/Palms*          | Ok  |
| 128 | April 20, 2004 | MJF-03G/Banana*        | Ok  |
| 129 | April 20, 2004 | ON-41P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 127)                   |
| 130 | April 20, 2004 | ON-41P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 127 and 129)           |
| 131 | April 20, 2004 | MJF-03G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 128)                   |
| 132 | April 21, 2004 | D601/Mango             | <b>There is no field named D601 in the Jauca farm</b> |
| 133 | April 21, 2004 | ON-41P/Palms*          | Ok  |
| 134 | April 21, 2004 | R104/Mango             | <b>There is no field named R104 in the Jauca farm</b> |
| 135 | April 21, 2004 | ON-41P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 133)                   |
| 136 | April 22, 2004 | ON-42P/Palms*          | Ok  |
| 137 | April 22, 2004 | JC-07P/Palms*          | Ok  |
| 138 | April 22, 2004 | JC-07P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 137)                   |
| 139 | April 22, 2004 | ON-42P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 136)                   |
| 140 | April 22, 2004 | D501/Mango             | <b>There is no field named D501 in the Jauca farm</b> |



|     |                |                 |  |
|-----|----------------|-----------------|--|
| 141 | April 22, 2004 | R101/Mango      | There is no field named R101 in the Jauca farm |
| 142 | April 22, 2004 | ON-42P/Palms*   | COUNT HAS BEEN DUPLICATED (SEE 136 and 139)    |
| 143 | April 22, 2004 | JC-07P/Palms*   | COUNT HAS BEEN DUPLICATED (SEE 137 and 138)    |
| 144 | April 23, 2004 | MJF-01G/Banana* | Ok   |
| 145 | April 23, 2004 | TX-54G/Banana*  | Ok   |
| 146 | April 23, 2004 | TX-54G/Banana*  | COUNT HAS BEEN DUPLICATED (SEE 145)            |
| 147 | April 23, 2004 | MJF-01G/Banana* | COUNT HAS BEEN DUPLICATED (SEE 144)            |
| 148 | April 23, 2004 | MJF-01G/Banana* | COUNT HAS BEEN DUPLICATED (SEE 144 and 147)    |
| 149 | April 23, 2004 | TX-54G/Banana*  | COUNT HAS BEEN DUPLICATED (SEE 145 and 146)    |
| 150 | April 26, 2004 | OS-11/Mango     | Ok   |
| 151 | April 26, 2004 | ON-52CLT/Citrus | Ok   |

57. Being an issue of law, an answer is not required.

58. As stated in paragraph 58 of the complaint, EPA's allegations are denied.

59. As stated in paragraph 59 of the complaint, EPA's allegations are denied.

#### **COUNTS 152-153**

#### **FAILURE TO PROVIDE DECONTAMINATION SUPPLIES TO WORKERS**

60. It is admitted, subject to test of materiality and noted exceptions.

61. It is admitted.

62. Being an issue of law, an answer is not required.

63. As stated in paragraph 63 of the complaint, EPA's allegations are denied. The Complainant has wrongly assumed that the main decontamination area and the central posting facility are at the same place, and that they are at equal distance from the JC-11 mango field. This is not the case since the main decontamination area and the central posting facility are different and separate sites, although the former is closer to mango field JC-11. See Respondent's Initial Prehearing Exchange Exhibit W, item 14, Farm

Maps, map number 2, and see map (not to scale) submitted in substitution of map included in Respondent's Initial Prehearing Exchange.

PRDA-EPA personnel that conducted the April 26, 2004, inspection, failed to notice that at the midpoint between the JC-11 mango field and the main decontamination area of the Jauca facility, Respondent had installed a fruit washing station, similar to a huge shower, that doubles as a decontamination facility. This shower-like structure (located on the dirt road from JC-11 towards fields JC-31, JC-41, JC-32 and JC-42) was fully operational at the time of the inspection and provided readily available water for decontamination of workers. See Complainant's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy, last updated on Wednesday, June 23rd, 2004.<sup>1/</sup>

The inspector who measured the distance between the JC-11 mango field to the central posting facility and to the main decontamination, used a car odometer of a vehicle moving along the facility's main roads, and stated that it was approximately 0.6 miles. Said measurements were objected in the Answer to the Complaint and in the Answer to the First Amended Complaint, paragraph 63. However, using the same technology to measure the distances between the JC-11 mango field and the fruit washing station, Respondent recorded the same to be less than 0.3 miles. Therefore, abundant water at the fruit washing station was available to workers picking up fruit in the JC-11 mango field, within FIFRA's standards.

Claimant has also disregarded documents previously submitted to EPA showing Respondent's compliance with FIFRA. Respondent supplies abundant water and makes available bathroom facilities to all employees at the main decontamination area, the

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<sup>1</sup> URL: <http://www.epa.gov/oppfod01/safety/workers/wpsinterpolicy.htm>

central office where the central posting facility is located, and the main packing plant of Jauca facility, located next the central office.<sup>2/</sup> The record shows that beginning in January, 2003, to the present time, this agricultural concern has continuously purchased decontamination supplies such as soap, hand cleaners, single use towels, and other supplies making them available to workers and handlers, and has also purchased all necessary PPE for handlers such as goggles, protective masks, filters and gloves. See Respondent's Initial Prehearing Exchange Exhibit W, item 11.

64. The first sentence of paragraph 64 is admitted, the rest is denied. Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to location of supplies within ¼ of a mile standard) was issued by EPA prior to the assessment of civil penalties under this complaint. It is also affirmatively alleged that PRDA-EPA personnel disregarded official policy contained in the agency's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy, among others, chapter (3.1) on Decontamination, that deals with requirements such as Size of eyeflush containers (3.11); Single-use towels (3.12); Decontamination materials for flaggers (3.13); Immediate Availability of eyeflush (3.14); Examples of immediate availability (3.15); WPS and OSHA requirements for decontamination water (3.17); and Use of diluent water for decontamination (3.21).

65. Being an issue of law, an answer is not required. Alternatively, it is denied. Abundant water at the fruit washing station was available to workers picking up fruit in the JC-11 mango field. See answers to paragraphs 63 and 64.

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<sup>2</sup> See Respondent's Initial Prehearing Exchange, Exhibit W, item 14, Farm Maps, map number 2; also, see map of the Jauca facility (not to scale), recently updated on August 26, 2005.



66. Being an issue of law, an answer is not required. Alternatively, it is denied. See answers to paragraphs 63 and 64

67. It is admitted from this paragraph that during the visit of April 26, 2004, the inspector stated that there was no eye-flush container designed specifically for flushing eyes; the rest is denied. Respondent affirmatively alleges that eye-flush material was immediately purchased and made available to company personnel. Respondent further alleges that there was abundant water available; both at the main decontamination area and in the mixing area, and that no written warning for a violation of FIFRA (as to eye-flush container designed specifically for flushing eyes) was issued by EPA prior to the assessment of civil penalties under this paragraph. Finally, Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy. See answers to paragraphs 63 and 64.

68. Being an issue of law, an answer is not required. Alternatively, it is denied. Abundant water at the fruit washing station was available to workers picking up fruit in the JC-11 mango field. See answers to paragraphs 63 and 64.

**COUNTS 154-304**  
**FAILURE TO NOTIFY HANDLERS OF PESTICIDE APPLICATIONS**

69. It is admitted, subject to test of materiality and noted exceptions. Respondent affirmatively alleges that agricultural establishments are not required to duplicate their posting sites and state identical (WPS) information to workers and to handlers that share the same working environment. Since both regulatory requirements are for all practical purposes, identical --see 40 C.F.R. §§ 170.122; 170.135 (d)(2) and compare to 40 C.F.R. §§ 170.222; 170.235 (d)(2) -- one adequately placed posting site for both categories of



employees satisfies FIFRA's policies. Therefore, counts 154-304 are nothing more than a duplication of counts 1-151 and either group of proposed penalties should be dismissed at once.

70. As stated in paragraph 70 of the complaint, EPA's allegations are denied. Respondent affirmatively alleges that statements attributed to Mr. Alvaro Acosta have been taken out of context. His obligations do not include reporting pesticide applications nor the preparation and posting of WPS reports at the central information center. Respondent further alleges, as clearly stated to inspector, that all applications of pesticide (herbicides included) are indeed documented, which suggests that inspector confused issues since herbicides (vis-a-vis other pesticides) are applied, supervised, documented and reported by diverse company employees.

71. As stated in paragraph 71 of the complaint, EPA's allegations are denied. The Respondent gave to the PRDA-EPA Inspectors all the information they requested, being their duty to thoroughly review the data so that a well pleaded complaint could be submitted for adjudication.

The raw data given to the inspectors was erroneously reviewed and the EPA had to submit a "Motion for Leave to File First Amended Complaint" to amend the Complaint due to alleged "technical errors." Additionally, also resulting from the inspector's confusion and misrepresentation of data provided by the Respondent, the Complainant had to remove Application No. 10 from the tables presented in Paragraphs 56 and 71 of the Complaint (and the two counts associated therewith, as reflected in Paragraphs 59 and 74) because it had incorrectly identified Field JC-41 a mango field in which the pesticide "Clear Out 41 Plus" had been applied on March 29, 2004.

However, a considerable number of applications of the pesticide “Clear Out 41 Plus” on different dates --forty one to be precise-- have been erroneously kept by the EPA in the tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as the eighty two counts associated therewith reflected in Paragraphs 59 and 74, as follows: Twenty nine (29) applications of pesticides on fields that are not part of the Jauca facility; six (6) applications of pesticides along fences or property limits; three (3) applications of pesticides in workshops; and three (3) applications of pesticides in nurseries. PRDA-EPA personnel should again review the data provided by the Respondent updating the Complainant’s Exhibit No. 21b, to remove the above applications and all counts associated therewith as reflected in Paragraphs 59 and 74 of the Amended Complaint.

Also, over fifty (50) applications of the pesticide “Clear Out 41 Plus” have been duplicated and included in the same tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as their corresponding counts associated therewith reflected in Paragraphs 59 and 74. Consequently, all of EPA’s allegation included in this complaint are flawed, and the proposed civil penalties should be denied.

#### **APPLICATION TABLE**

| <b>App #</b> | <b>Date of Application</b> | <b>Field Name/Crop</b> | <b>Comments</b>  |
|--------------|----------------------------|------------------------|--|
| 1            | March 29, 2004             | MJF-04G/Banana*        | Ok   |
| 2            | March 29, 2004             | TX-52G/Banana*         | Ok   |
| 3            | March 29, 2004             | MJF-04G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 1)                      |
| 4            | March 29, 2004             | MJF-04G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 1 and 3)                |
| 5            | March 29, 2004             | TX-52G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 2)                      |
| 6            | March 29, 2004             | TX-41                  | Ok (CORRECTED previously misidentified as JC-41/Mango) |
| 7            | March 29, 2004             | TX-31/Mango            | Ok   |
| 8            | March 29, 2004             | TX-32/Mango            | Ok   |
| 9            | March 29, 2004             | TX-52G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 2 and 5)                |

|    |                |                        |   |
|----|----------------|------------------------|---|
| 10 | March 30, 2004 | ON-41P/Palms*          | Ok  |
| 11 | March 30, 2004 | JC-41/Mango            | Ok  |
| 12 | March 30, 2004 | ON-41P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 10)                    |
| 13 | March 30, 2004 | JC-42/Mango            | Ok  |
| 14 | March 30, 2004 | ON-41P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 10 and 12)             |
| 15 | March 31, 2004 | JC-22/Mango            | Ok  |
| 16 | March 31, 2004 | D501/Mango             | <b>There is no field named D501 in the Jauca farm</b> |
| 17 | March 31, 2004 | JC-11/Mango            | Ok  |
| 18 | March 31, 2004 | ON-42P/Palms*          | Ok  |
| 19 | March 31, 2004 | ON-42P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 18)                    |
| 20 | March 31, 2004 | ON-43P/Palms*          | Ok  |
| 21 | March 31, 2004 | ON-43P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 20)                    |
| 22 | March 31, 2004 | D601/Mango             | <b>There is no field named D601 in the Jauca farm</b> |
| 23 | March 31, 2004 | JC-21/Mango            | Ok  |
| 24 | April 1, 2004  | D701/Mango             | <b>There is no field named D701 in the Jauca farm</b> |
| 25 | April 1, 2004  | JC-12P/Palms*          | Ok  |
| 26 | April 1, 2004  | D601/Mango             | <b>There is no field named D601 in the Jauca farm</b> |
| 27 | April 1, 2004  | JC-12P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 25)                    |
| 28 | April 1, 2004  | JC-12P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 25 and 27)             |
| 29 | April 1, 2004  | JC-23/Mango            | ?   |
| 30 | April 1, 2004  | JC-31/Mango            | Ok  |
| 31 | April 2, 2004  | Invernadero/Omamental* | <b>This is not a fruit field, is a nursery</b>        |
| 32 | April 2, 2004  | Invernadero/Omamental* | <b>This is not a fruit field, is a nursery</b>        |
| 33 | April 2, 2004  | Verjas/Crop Not Listed | <b>This is not a fruit field, is a fence</b>          |
| 34 | April 2, 2004  | JC-11/Mango            | Ok  |
| 35 | April 2, 2004  | Invernadero/Omamental* | <b>This is not a fruit field, is a nursery</b>        |
| 36 | April 2, 2004  | TX-54G/Banana*         | Ok  |
| 37 | April 2, 2004  | TX-54G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 36)                    |
| 38 | April 2, 2004  | Verjas/Crop Not Listed | <b>This is not a fruit field, is a fence</b>          |
| 39 | April 2, 2004  | Verjas/Crop Not Listed | <b>This is not a fruit field, is a fence</b>          |
| 40 | April 2, 2004  | JC-32/Mango            | Ok  |
| 41 | April 2, 2004  | D401/Mango             | <b>There is no field named D401 in the Jauca farm</b> |
| 42 | April 2, 2004  | TX-54G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 36 and 37)             |
| 43 | April 5, 2004  | DSPR/Mango             | <b>There is no field named DSPR in the Jauca farm</b> |
| 44 | April 5, 2004  | TX-22/Mango            | Ok  |
| 45 | April 5, 2004  | TX-32/Mango            | Ok  |
| 46 | April 5, 2004  | TX-06P/Palms*          | Ok  |
| 47 | April 5, 2004  | TX-06P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 46)                    |
| 48 | April 5, 2004  | JC-06P/Palms*          | Ok  |
| 49 | April 5, 2004  | TX-06P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 46 and 47)             |
| 50 | April 5, 2004  | JC-07P/Palms*          | Ok  |
| 51 | April 5, 2004  | JC-07P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 50)                    |
| 52 | April 5, 2004  | JC-07P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 50 and 51)             |
| 53 | April 5, 2004  | JC-06P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 48)                    |
| 54 | April 5, 2004  | JC-06P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 48 and 53)             |



|    |                |                        |   |
|----|----------------|------------------------|---|
| 55 | April 6, 2004  | MJF-07P/Palms*         | Ok  |
| 56 | April 6, 2004  | MJF-07P/Palms*         | COUNT HAS BEEN DUPLICATED (SEE 55)                            |
| 57 | April 6, 2004  | MJF-07P/Palms*         | COUNT HAS BEEN DUPLICATED (SEE 55 and 56)                     |
| 58 | April 6, 2004  | ON-11A/Avocado*        | Ok  |
| 59 | April 6, 2004  | TX-41/Mango            | ?   |
| 60 | April 6, 2004  | ON-12C/Citrus          | Ok  |
| 61 | April 6, 2004  | DSPR/Mango             | <b>There is no field named DSPR in the Jauca farm</b>         |
| 62 | April 6, 2004  | Taller/Crop Not Listed | <b>This is not a fruit field, is a workshop</b>               |
| 63 | April 6, 2004  | Taller/Crop Not Listed | <b>This is not a fruit field, is a workshop</b>               |
| 64 | April 6, 2004  | Taller/Crop Not Listed | <b>This is not a fruit field, is a workshop</b>               |
| 65 | April 7, 2004  | R010/Mango             | <b>There is no field named R010 in the Jauca farm</b>         |
| 66 | April 7, 2004  | D106/Mango             | <b>There is no field named D106 in the Jauca farm</b>         |
| 67 | April 7, 2004  | DSPI or DSPR/Mango     | <b>There is no field named DSPI or DSPR in the Jauca farm</b> |
| 68 | April 7, 2004  | ON-71A/Avocado         | Ok  |
| 69 | April 7, 2004  | ON-06A/Avocado         | Ok  |
| 70 | April 7, 2004  | OS-33H/Plantains*      | Ok  |
| 71 | April 7, 2004  | TX-53G/Banana          | Ok  |
| 72 | April 7, 2004  | OS-17P/Palms*          | Ok  |
| 73 | April 7, 2004  | OS-17P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 72)                            |
| 74 | April 7, 2004  | ON-72A/Avocado         | Ok  |
| 75 | April 7, 2004  | OS-33H/Plantains*      | COUNT HAS BEEN DUPLICATED (SEE 70)                            |
| 76 | April 7, 2004  | ON-82A/Avocado         | Ok  |
| 77 | April 7, 2004  | TX-53G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 71)                            |
| 78 | April 7, 2004  | R013/Mango             | <b>There is no field named R013 in the Jauca farm</b>         |
| 79 | April 7, 2004  | R011/Mango             | <b>There is no field named R011 in the Jauca farm</b>         |
| 80 | April 7, 2004  | DSPR/Mango             | <b>There is no field named DSPR in the Jauca farm</b>         |
| 81 | April 8, 2004  | DSPR/Mango             | <b>There is no field named DSPR in the Jauca farm</b>         |
| 82 | April 12, 2004 | ON-82A/Avocado         | Ok  |
| 83 | April 12, 2004 | ON-21A/Avocado         | Ok  |
| 84 | April 12, 2004 | ON-32A/Avocado         | Ok  |
| 85 | April 12, 2004 | DSPR/Mango             | <b>There is no field named DSPR in the Jauca farm</b>         |
| 86 | April 13, 2004 | ON-21A/Avocado         | Ok  |
| 87 | April 13, 2004 | ON-31A/Avocado         | Ok  |
| 88 | April 13, 2004 | ON-22A/Avocado         | Ok  |
| 89 | April 13, 2004 | D001/Mango             | <b>There is no field named D001 in the Jauca farm</b>         |
| 90 | April 13, 2004 | MJF-09P/Palms*         | Ok  |
| 91 | April 13, 2004 | MJF09P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 90)                            |
| 92 | April 13, 2004 | MJF09P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 90 and 91)                     |
| 93 | April 14, 2004 | D001/Mango             | <b>There is no field named D001 in the Jauca farm</b>         |
| 94 | April 14, 2004 | MJF-09P/Palms*         | Ok  |
| 95 | April 14, 2004 | OS-25H/Plantains*      | Ok  |
| 96 | April 14, 2004 | OS-25H/Plantains*      | COUNT HAS BEEN DUPLICATED (SEE 95)                            |
| 97 | April 14, 2004 | MJF-09P/Palms*         | COUNT HAS BEEN DUPLICATED (SEE 94)                            |
| 98 | April 14, 2004 | R401/Mango             | <b>There is no field named R401 in the Jauca farm</b>         |
| 99 | April 14, 2004 | OE-22G/Banana*         | Ok  |



|     |                |                        |   |
|-----|----------------|------------------------|---|
| 100 | April 14, 2004 | OE-22G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 99)                    |
| 101 | April 14, 2004 | MJF-09P/Palms*         | COUNT HAS BEEN DUPLICATED (SEE 94 and 97)             |
| 102 | April 14, 2004 | OE-22G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 99 and 100)            |
| 103 | April 15, 2004 | OE-22G/Banana*         | Ok  |
| 104 | April 15, 2004 | OE-22G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 103)                   |
| 105 | April 15, 2004 | Verjas/Crop Not Listed | <b>This is not a fruit field, is a fence</b>          |
| 106 | April 15, 2004 | Verjas/Crop Not Listed | <b>This is not a fruit field, is a fence</b>          |
| 107 | April 15, 2004 | OE-22G/Banana*         | COUNT HAS BEEN DUPLICATED SEE 103 and 104)            |
| 108 | April 15, 2004 | D201/Mango             | <b>There is no field named D201 in the Jauca farm</b> |
| 109 | April 15, 2004 | R403/Mango             | <b>There is no field named R403 in the Jauca farm</b> |
| 110 | April 15, 2004 | Verjas/Crop Not Listed | <b>This is not a fruit field, is a fence</b>          |
| 111 | April 16, 2004 | OE-21G/Banana*         | Ok  |
| 112 | April 16, 2004 | MJF-04G/Banana*        | Ok  |
| 113 | April 16, 2004 | OE-21G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 111)                   |
| 114 | April 16, 2004 | MJF-04G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 112)                   |
| 115 | April 16, 2004 | OE-21G/Banana*         | COUNT HAS BEEN DUPLICATED (SEE 111 and 113)           |
| 116 | April 16, 2004 | MJF-04G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 112 and 114)           |
| 117 | April 16, 2004 | R405/Mango             | <b>There is no field named R405 in the Jauca farm</b> |
| 118 | April 19, 2004 | R108/Mango             | <b>There is no field named R108 in the Jauca farm</b> |
| 119 | April 19, 2004 | ON-09A/Avocado         | Ok  |
| 120 | April 19, 2004 | MJF-03G/Banana*        | Ok  |
| 121 | April 19, 2004 | D401/Mango             | <b>There is no field named D401 in the Jauca farm</b> |
| 122 | April 19, 2004 | MJF-03G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 120)                   |
| 123 | April 19, 2004 | MJF-03G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 120 and 122)           |
| 124 | April 19, 2004 | ON-09A/Avocado*        | COUNT HAS BEEN DUPLICATED (SEE 119)                   |
| 125 | April 20, 2004 | D601/Mango             | <b>There is no field named D601 in the Jauca farm</b> |
| 126 | April 20, 2004 | R104/Mango             | <b>There is no field named R104 in the Jauca farm</b> |
| 127 | April 20, 2004 | ON-41P/Palms*          | Ok  |
| 128 | April 20, 2004 | MJF-03G/Banana*        | Ok  |
| 129 | April 20, 2004 | ON-41P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 127)                   |
| 130 | April 20, 2004 | ON-41P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 127 and 129)           |
| 131 | April 20, 2004 | MJF-03G/Banana*        | COUNT HAS BEEN DUPLICATED (SEE 128)                   |
| 132 | April 21, 2004 | D601/Mango             | <b>There is no field named D601 in the Jauca farm</b> |
| 133 | April 21, 2004 | ON-41P/Palms*          | Ok  |
| 134 | April 21, 2004 | R104/Mango             | <b>There is no field named R104 in the Jauca farm</b> |
| 135 | April 21, 2004 | ON-41P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 133)                   |
| 136 | April 22, 2004 | ON-42P/Palms*          | Ok  |
| 137 | April 22, 2004 | JC-07P/Palms*          | Ok  |
| 138 | April 22, 2004 | JC-07P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 137)                   |
| 139 | April 22, 2004 | ON-42P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 136)                   |
| 140 | April 22, 2004 | D501/Mango             | <b>There is no field named D501 in the Jauca farm</b> |
| 141 | April 22, 2004 | R101/Mango             | <b>There is no field named R101 in the Jauca farm</b> |
| 142 | April 22, 2004 | ON-42P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 136 and 139)           |
| 143 | April 22, 2004 | JC-07P/Palms*          | COUNT HAS BEEN DUPLICATED (SEE 137 and 138)           |
| 144 | April 23, 2004 | MJF-01G/Banana*        | Ok  |

|     |                |                 |   |
|-----|----------------|-----------------|---|
| 145 | April 23, 2004 | TX-54G/Banana*  | Ok  |
| 146 | April 23, 2004 | TX-54G/Banana*  | COUNT HAS BEEN DUPLICATED (SEE 145)         |
| 147 | April 23, 2004 | MJF-01G/Banana* | COUNT HAS BEEN DUPLICATED (SEE 144)         |
| 148 | April 23, 2004 | MJF-01G/Banana* | COUNT HAS BEEN DUPLICATED (SEE 144 and 147) |
| 149 | April 23, 2004 | TX-54G/Banana*  | COUNT HAS BEEN DUPLICATED (SEE 145 and 146) |
| 150 | April 26, 2004 | OS-11/Mango     | Ok  |
| 151 | April 26, 2004 | ON-52CLT/Citrus | Ok  |

72. Being an issue of law, an answer is not required.

73. As stated in paragraph 73 of the complaint, EPA's allegations are denied.

74. As stated in paragraph 74 of the complaint, EPA's allegations are denied.

#### **COUNTS 305-321**

#### **FAILURE TO PROVIDE DECONTAMINATION SUPPLIES TO HANDLERS**

75. It is admitted, subject to test of materiality and noted exceptions.

76. As stated in paragraph 76 of the complaint, EPA's allegations are denied.

Respondent affirmatively alleges that it has complied with the agency's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy, among others, chapter (3.1) on Decontamination, that deals with requirements such as Size of eyeflush containers (3.11); Single-use towels (3.12); Decontamination materials for flaggers (3.13); Immediate Availability of eyeflush (3.14); Examples of immediate availability (3.15); WPS and OSHA requirements for decontamination water (3.17); and Use of diluent water for decontamination (3.21).

77. As stated in paragraph 77 of the complaint, EPA's allegations are denied.

Respondent affirmatively alleges that decontamination supplies at the mixing site are kept inside a six inch PVC tube that is glued closed at one end, with a screwed-in cap

at the other end. Running water for decontamination is abundantly available at the site, and the PVC tube contains soap, single-use towels, a set of overalls and gloves. Also, Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

78. Being an issue of law, an answer is not required. Alternatively, it is denied.

79. As stated in paragraph 79 of the complaint, EPA's allegations are denied.

Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to location of supplies within ¼ of a mile standard) was issued by EPA prior to the assessment of civil penalties brought in instant complaint. The agency has claimed that Martex farms, S.E. failed to provide decontamination supplies, including water, to handlers that purportedly applied pesticides at its Jauca facility on April 26, 2004, and that the mixing site and the decontamination facility for handlers are more than a ¼ of a mile from the fields listed in this paragraph of EPA's Complaint. Both claims have been challenged and are again disputed by the Respondent.

The agency has completely disregarded its own inspection of the Jauca facility and documents previously submitted by Martex Farms, S.E. showing that Respondent supplies abundant water and makes available bathroom facilities and supplies to all employees working at the Jauca facility. The record shows that since January, 2003, to the present time, this agricultural concern has continuously purchased decontamination supplies such as soap, hand cleaner, single use towels, and other supplies to make them available to all employees, including workers and handlers, and has also purchased all necessary PPE for handlers such as goggles, protective masks, filters and gloves.



Pertaining to EPA's allegations that the mixing site and the decontamination facility for handlers are more than the ¼ of a mile from the Jauca facility fields OS-11, OS-12, OS-15, OS-16, ON-52CLT, OE-11G, OE-21G, JC-31, TX-21, and TX-22, Respondent has previously challenged the same, submitting evidence that shows that fields OS-12, OS-16 TX-21 and TX-22 are less than a ¼ of a mile from the mixing site, that fields OS-11, OS-15, ON-52CLT are less than a ¼ of a mile from an existing lake, and that field JC-31 is almost at the fruit washing station, mentioned in answer 63, above. In other words, Respondent does not violate the minimum distance requirements for the supply of water and decontamination items to agricultural personnel that the agency has claimed. On the contrary, the evidence shows that such fields comply with the regulated distance and that abundant water was available for the decontamination of workers and handlers on the dates the agency alleged such violations occurred. Finally, Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

80. Paragraph 80 is denied as to both alleged violations. Respondent affirmatively alleges that during the April 26, 2004, inspection, all other required decontamination supplies were available on the main decontamination area and in the mixing site. However, the inspector observed that it was also necessary to have clean towels on the main decontamination area, and that eyewash was missing at the mixing site. Corrective actions were taken immediately, both were confirmed by the inspector during the follow up visit of April 29, 2004. Respondent further alleges that no written warning for a violation of FIFRA (as to lack of eyewash supplies standard) was issued by EPA prior to



the assessment of civil penalties for the seventeen applications included in the next paragraph 81.

Also, see affirmative defense number 12: The agency has discretion to pursue different courses of action taking into account that no violations were reported following the March 24, 2003 PRDA-EPA inspection of the Jauca facility, and that there is no evidence that Respondent has caused harm to health or the environment. Section 14(a)(4) of FIFRA states that EPA may choose to issue a Notice of Violation in lieu of a civil penalty if the agency determines that the violation occurred despite the exercise of due care or the violation did not cause significant harm to health or the environment. Section 9(c)(3) also permits the EPA to issue a written Notice of Warning in lieu of instituting a proceeding for minor violations of FIFRA if the Administrator believes that the public interest will be adequately served through this course of action. Finally, Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

81. It is admitted.

82. Being an issue of law, an answer is not required.

83. As stated in paragraph 83 of the complaint, EPA's allegations are denied. It is affirmatively alleged that following the April 26, 2004 observations that it was necessary to have clean towels on the main decontamination area and that eyewash was missing in the mixing site, corrective actions were taken immediately as confirmed during the follow up visit of April 29, 2004. Respondent further alleges that no written warning for a violation of FIFRA (as to lack of eyewash supplies and/or as to location of supplies within ¼ of a mile standards) were issued by EPA prior to the assessment of civil

penalties brought in instant complaint. Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

84. As stated in paragraph 84 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80. Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

85. Being an issue of law, an answer is not required.

86. As stated in paragraph 86 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80. Also, Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

87. As stated in paragraph 87 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80. Also, Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

88. Being an issue of law, an answer is not required.

89. As stated in paragraph 89 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80. Also, Respondent affirmatively alleges that it has complied with

EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

90. As stated in paragraph 90 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80. Also, Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

91. Being an issue of law, an answer is not required.

92. As stated in paragraph 92 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80. Also, Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

93. As stated in paragraph 93 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80. Also, Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

**COUNTS 322-334**  
**FAILURE TO PROVIDE PERSONAL PROTECTIVE EQUIPMENT TO**  
**HANDLERS**

94. It is admitted, subject to test of materiality and noted exceptions.

95. As stated in paragraph 95 of the complaint, EPA's allegations are denied.



Respondent affirmatively alleges that it did provide all of its handlers with the appropriate PPE. On April 26, 2004 Mr. Acosta informed the inspector that handlers received from their supervisor clean PPE on a daily basis, at the beginning of each working shift. Said PPE kept in the small warehouse located at the central office was shown to the inspectors. The inspectors were told that protective eyewear and respirator masks were kept in a locker next to the chemical warehouse and main decontamination area. As stated before, on that day the inspectors did not see the contents of that locker, but they did so on their follow-up visit of April 29, 2004. Mr. Acosta also told the inspector that normally the handlers kept their clean clothes in personal bags that were either left in the main decontamination area or in their private vehicles. It is further alleged that on the follow up visit of April 29, 2004, the inspector suggested to Respondent' agronomist to acquire more lockers so that handlers could safely store their PPE and clean clothes. Immediately, arrangements were made to acquire additional lockers, and said lockers shown to the inspector on the visit of July 20, 2004. Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to failure to provide PPE to its handlers or storage thereof standards) were issued by EPA prior to the assessment of civil penalties under this complaint.

96. As stated in paragraph 96 of the complaint, EPA's allegations are denied. Respondent affirmatively alleges that PPE was shown to inspector and additional lockers were purchased as alleged in paragraph 95, above.

97. It is admitted. It is affirmatively alleged that if handlers had been applying pesticides to mango, citrus, and banana fields at its Jauca facility, as claimed, they



were using their PPE and, consequently, the same could not have been in storage to be seen by the PRDA-EPA personnel.

98. Being an issue of law, an answer is not required. Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to failure to provide PPE to its handlers or storage thereof standards) were issued by EPA prior to the assessment of civil penalties under this complaint.

99. As stated in paragraph 99 of the complaint, EPA's allegations are denied.

100. As stated in paragraph 100 of the complaint, EPA's allegations are denied. Respondent affirmatively alleges that it did provide to its handlers all appropriate PPE. See paragraph 95.

101. Being an issue of law, an answer is not required. Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to failure to provide PPE to its handlers or storage thereof standards) were issued by EPA prior to the assessment of civil penalties under this complaint.

102. As stated in paragraph 102 of the complaint, EPA's allegations are denied. See paragraph 95.

103. As stated in paragraph 103 of the complaint, EPA's allegations are denied. Respondent affirmatively alleges that it did provide to its handlers all appropriate PPE. See paragraph 95.

104. Being an issue of law, an answer is not required. Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to failure to provide PPE to its handlers or storage standards) were issued by EPA prior to the assessment of civil penalties under this complaint.

105. As stated in paragraph 105 of the complaint, EPA's allegations are denied.

106. As stated in paragraph 106 of the complaint, EPA's allegations are denied.

Respondent affirmatively alleges that it did provide to its handlers all appropriate PPE. See paragraph 95. Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to failure to provide PPE to its handlers or storage standards) were issued by EPA prior to the assessment of civil penalties under this complaint.

**COUNTS 335-336**  
**FAILURE TO PROVIDE DECONTAMINATION SUPPLIES TO HANDLERS**

107. It is admitted, subject to test of materiality and noted exceptions.

108. As stated in paragraph 108 of the complaint, EPA's allegations are denied. It is affirmatively alleged that the inspector failed to see that the Coto Laurel facility has continuous running water supplied by the Puerto Rico Aqueduct and Sewers Authority, and that the area has bathrooms, several faucets and hoses that supply running water for routine washing, emergency eye flushing and for washing the entire body. The Coto Laurel facility also has an emergency water storage tank with capacity for several thousand gallons of tap water. Respondent further alleges that no written warning for a violation of FIFRA (as to failure to provide showers) was issued by EPA prior to the assessment of civil penalties under this complaint. Also, see answer to paragraph 49, above: It is affirmatively alleged that Respondent's agronomist was handed the Coto Laurel visit report and was required to sign it. The document had been drafted in English by the inspector. Not only Mr. Alvaro Acosta's English is poor, to say the least, he did not attend EPA's Coto Laurel farm inspection of April 26, 2004. Also, Respondent

affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

109. It is admitted.

110. It is admitted.

111. Being an issue of law, an answer is not required. Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to failure to provide showers, eye-flushing, etc...) were issued by EPA prior to the assessment of civil penalties under this complaint.

112. As stated in paragraph 112 of the complaint, EPA's allegations are denied. Respondent's records show that EPA's inspector did not visit C001 mango field on the date of the alleged violation. Also, Respondent affirmatively alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

113. As stated in paragraph 113 of the complaint, EPA's allegations are denied. See paragraph 112, above. Respondent affirmatively re-alleges that it has complied with EPA's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy.

### **III. CIVIL PENALTIES**

114. As stated in paragraph 114 of the complaint, EPA's allegations are denied. Under section 14(a)(2) of FIFRA, a written warning for a violation of FIFRA must be issued to a private applicator prior to the assessment of a civil penalty. The record shows that no written warnings for violations of FIFRA as to (1) location of supplies within ¼



of a mile of 'workers' and 'handlers'; (2) lack of eyewash supplies and/or eye-flush containers designed specifically for flushing eyes; and (3) failure to provide PPE to 'handlers' or to provide 'storage facilities' were issued by EPA against Respondent, prior to the assessment of civil penalties under this complaint.

The complaint is discriminatory and is intended to damage the reputation and well being of Respondent, a local agricultural enterprise. Said complaint is plagued with inaccuracies, erroneous factual allegations and the wrongful application of the law.

The proposed penalties are exaggerated, totally unreasonable and disproportionate and are not related whatsoever to the alleged FIFRA violations. Finally, EPA has abused its delegated powers by imposing double penalties for the same alleged violations. Agricultural establishments are not required to duplicate their posting sites and state identical (WPS) information to workers and to handlers that share the same working environment. Note that 40 C.F.R. §§ 170.122; 170.135 (d)(2) and 40 C.F.R §§ 170.222; 170.235 (d)(2) are, for all practical purposes, identical. Therefore, one adequately placed posting site for both categories of employees satisfies FIFRA's policies. In addition, counts 154-304 are nothing more than a duplication of counts 1-151, and this pattern of duplication of alleged violations and penalties is repeated over and over thru all the complaint.

The Respondent gave to the PRDA-EPA Inspectors all the information they requested, being their duty to thoroughly review the data so that a well pleaded complaint could be submitted for adjudication. The raw data given to the inspectors was erroneously reviewed and the EPA had to submit a "Motion for Leave to File First Amended Complaint" to amend the Complaint due to alleged "technical errors."



Additionally, also resulting from the inspector's confusion and misrepresentation of data provided by the Respondent, the Complainant had to remove Application No. 10 from the tables presented in Paragraphs 56 and 71 of the Complaint (and the two counts associated therewith, as reflected in Paragraphs 59 and 74) because it had incorrectly identified Field JC-41 a mango field in which the pesticide "Clear Out 41 Plus" had been applied on March 29, 2004.

However, a considerable number of applications of the pesticide "Clear Out 41 Plus" on different dates --forty one to be precise-- have been erroneously kept by the EPA in the tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as the eighty two counts associated therewith reflected in Paragraphs 59 and 74, as follows: Twenty nine (29) applications of pesticides on fields that are not part of the Jauca facility; six (6) applications of pesticides along fences or property limits; three (3) applications of pesticides in workshops; and three (3) applications of pesticides in nurseries. PRDA-EPA personnel should again review the data provided by the Respondent updating the Complainant's Exhibit No. 21b, to remove the above applications and all counts associated therewith as reflected in Paragraphs 59 and 74 of the Amended Complaint.

Also, over fifty (50) applications of the pesticide "Clear Out 41 Plus" have been duplicated and included in the same tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as their corresponding counts associated therewith reflected in Paragraphs 59 and 74. Consequently, all of EPA's allegation included in this complaint are flawed, and the proposed civil penalties should be denied.

115. Respondent takes issue with EPA as to the facts that allegedly support the penalties imposed in this case.

116. No answer required.

117. No answer required.

#### **IV. OPPORTUNITY TO REQUEST A HEARING**

118. A hearing is hereby requested.

119. Requirement has been complied with.

120. Answer timely submitted.

121. A hearing is hereby requested.

#### **V. SETTLEMENT CONFERENCE**

122. A settlement conference with the Complainant is hereby requested.

123. A settlement conference with the Complainant is hereby requested.

#### **VI. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

124. Respondent not to engage in ex parte communications.

#### **VII. AFFIRMATIVE DEFENSES**

125. Respondent reserves the right to raise additional defenses upon completing discovery proceedings and hereby raises the following affirmative defenses:

1. The complaint fails to state a claim against Martex Farms, S.E.

2. Under section 14(a)(2) of FIFRA, a written warning for a violation of FIFRA must be issued to a private applicator prior to the assessment of a civil penalty.

3. The alleged FIFRA violations have not caused any harm to health or the environment.

4. Respondent has exercised due care to promptly take corrective measures to deal with any deficiencies that EPA has formally or informally notified.

5. The complaint is discriminatory and is intended to damage the reputation and well being of a local agricultural enterprise. EPA's press release of February 3, 2005, has already caused considerable damages to appearing party, putting at risk the economic well-being and stability of the company.

6. Said complaint is plagued with inaccuracies, erroneous factual allegations and the wrongful application of the law. As a matter of fact, the administrative record shows that the service process of the instant complaint is indeed questionable. Documents were faxed to EPA's San Juan representatives who partially delivered an illegible copy of the complaint on or about February 4, 2005. It was not until February 9, 2005, that Respondent was notified and served with a full set of listed enclosures.

7. Penalties proposed by EPA are exaggerated, unrealistic, unreasonable, disproportionate and totally unrelated to the severity of alleged FIFRA violations.

8. EPA has abused its delegated powers by imposing a double set of penalties for the same alleged violations.

9. EPA has proposed penalties based on alleged WPS violations of identical regulatory requirements (40 C.F.R. § 170.122 and § 170.222) that runs contrary to FIFRA's policy of serving the public interest.

10. Respondent has an outstanding labor safety record with the PR State Insurance Fund that has resulted in the reduction of insurance costs.

11. In spite of the so-called severity of the violations included in this complaint, the agency deferred for about a year the commencement of this action. EPA's complaint is not intended to protect agricultural workers and/or agricultural handlers, but to cause undue hardship to Respondent.

12. The agency has discretion to pursue different courses of action taking into account that no violations were reported following the March 24, 2003 PRDA-EPA inspection of the Jauca facility, and that there is no evidence that Respondent has caused harm to health or the environment. Section 14(a)(4) of FIFRA states that EPA may choose to issue a Notice of Violation in lieu of a civil penalty if the agency determines that the violation occurred despite the exercise of due care or the violation did not cause significant harm to health or the environment. Section 9(c)(3) also permits the EPA to issue a written Notice of Warning in lieu of instituting a proceeding for minor violations of FIFRA if the Administrator believes that the public interest will be adequately served through this course of action.

13. Complainant did not follow procedures. No attempts (in writing) were made by the PRDA-EPA Inspector or the Case Development Officer to document the size of the Respondent's business to determine its appropriate category.

14. Complainant has disregarded official policy contained in the agency's Agricultural Worker Protection Standard 40 CFR Parts 156 & 170 Interpretative Policy, among others, chapter (3.1) on Decontamination, that deals with requirements such as Size of eyeflush containers (3.11); Single-use towels (3.12); Decontamination materials



for flaggers (3.13); Immediate Availability of eyeflush (3.14); Examples of immediate availability (3.15); WPS and OSHA requirements for decontamination water (3.17); and Use of diluent water for decontamination (3.21); Chapter (12.1) on Personal Protective Equipment, dealing with Chemical resistant footwear (12.12); Eye protection for dilute formulation (12.15), and Storage of PPE “apart” and “away” (12.19).

15. Respondent reserves the right to raise additional affirmative defenses that may result from discovery proceedings.

RESPECTFULLY SUBMITTED. The original and one copy sent to Knolyn Jones, Hearing Clerk, US EPA, Office of Administrative Law Judges, 1099 14<sup>th</sup>. Street, N.W., Suite 350, Washington, DC 20005; one copy sent to the Hon. Susan L. Biro, US EPA, Office of Administrative Law Judges, 1099 14<sup>th</sup>. Street, N.W., Suite 350, Washington, DC 20005; AND one copy NOTIFIED to Ms. Danielle Fidler, Special Litigation and Projects Division, Office of Regulatory Enforcement, US EPA, 1200 Pennsylvania Ave. NW (MC-2248A), Washington, DC 20460.

In San Juan, Puerto Rico, this 19<sup>th</sup> day of September, 2005.

William Santiago-Sastre  
  
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